

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSHUA BOOZE,
Plaintiff,

v.

JOHN E. WETZEL, et al.,
Defendants

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No. 1:12-cv-01307

(Judge Kane)
(Chief Magistrate Judge Schwab)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The above-captioned 42 U.S.C. § 1983 action was initiated upon the filing of a complaint on July 9, 2012 by pro se prisoner-Plaintiff Joshua Booze to recover against a number of Pennsylvania Department of Corrections employees and officials for alleged violations of his constitutional rights in connection with the confiscation of Plaintiff's property.¹

Before the Court is Magistrate Judge Schwab's May 25, 2017 Report and Recommendation (Doc. No. 131), recommending that the Court grant remaining Defendants Richard Irvin, Thomas Worker, and Jon Fisher's motion for summary judgment as to Plaintiff's surviving federal claims of First Amendment retaliation and conspiracy and pendent state law claims of negligence, willful misconduct, official oppression, and criminal coercion. Specifically, Magistrate Judge Schwab recommends granting summary judgment in favor of (1)

¹ Plaintiff filed an amended complaint on June 19, 2014, asserting claims against the following thirteen (13) Defendants: John E. Wetzel, John D. Fisher, R.S. Irvin, Lisa Hollibaugh, F.C. Shoop, Deputy Whitesel, Captain Meyers, Major Robinson, Dorina Varner, Tracy Williams, Lieutenant Goss, Sergeant Thomas Worker, and Lieutenant Allison. (Doc. No. 55.) On August 20, 2014, Defendants collectively moved to dismiss Plaintiff's amended complaint. (Doc. No. 65.) By Order dated March 17, 2015, the Court adopted Magistrate Judge Schwab's Report and Recommendation on Defendants' motion to dismiss, dismissing all claims against Defendants John E. Wetzel, Lisa Hollibaugh, F.C. Shoop, Deputy Whitesel, Captain Meyers, Major Robinson, Dorina Varner, Tracy Williams, Lieutenant Goss, and Lieutenant Allison with prejudice. (Doc. No. 78.)

Defendants Workinger and Fisher for failure on the part of Plaintiff to exhaust his administrative remedies; and (2) Defendant Irvin due to Plaintiff's failure to establish a genuine issue of material fact sufficient to withstand the motion for summary judgment as to the surviving federal and state law claims. (Id.)

Plaintiff has filed lengthy objections to Magistrate Judge Schwab's Report and Recommendation, wherein he disputes, inter alia, Magistrate Judge Schwab's: (1) refusal to consider Plaintiff's additional submission consisting of his own affirmative statement of the undisputed material facts; (2) recitation of the relevant undisputed material facts in connection with her resolution of the motion for summary judgment; (3) conclusion that Plaintiff failed to properly exhaust his administrative remedies as to his claims of retaliation against Defendants Workinger² and Fisher; and (4) finding that Plaintiff failed to produce evidence raising a genuine issue of material fact sufficient to withstand summary judgment on the claims against Defendant Irvin. (Doc. No. 132.) Defendants have filed a response to Plaintiff's objections. (Doc. No. 136.)

Having considered Plaintiff's objections and Defendants' response, this Court finds that Magistrate Judge Schwab correctly and comprehensively addressed the substance of Plaintiff's objections in the Report and Recommendation itself. Accordingly, the Court will not write separately to address Plaintiff's objections.

² Specifically, Magistrate Judge Schwab found that Plaintiff's vague and conclusory assertions that Defendant Workinger thwarted his efforts to finalize his appeal of his grievance concerning the confiscation of his shoes to SOIGA through assuring Plaintiff that his grievance had been resolved were insufficient, in light of the documentation Defendants proffered about Plaintiff's grievance history, to create a factual dispute material to the issue of whether Plaintiff exhausted his administrative remedies as to his First Amendment retaliation claim against Defendant Workinger.

ACCORDINGLY, on this 13th day of July 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT:**

1. The Clerk is directed to **TERMINATE** John E. Wetzel, Lisa Hollibaugh, F.C. Shoop, Deputy Whitesel, Captain Meyers, Major Robinson, Dorina Varner, Tracy Williams, Lieutenant Goss, and Lieutenant Allison as Defendants from this action in accordance with the Court's Order dated March 17, 2015 (Doc. No. 78);
2. The Court **ADOPTS** the Report and Recommendation (Doc. No. 131), of Magistrate Judge Schwab;
3. Defendants Richard Irvin, Thomas Worker, and Jon Fisher's motion for summary judgment (Doc. No. 108), is **GRANTED**; and
4. The Clerk is directed to enter judgment in favor of Defendants Richard Irvin, Thomas Worker, and Jon Fisher, and to **CLOSE** this case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania